

REMARKS

Claims 1-9 were pending in the application. Claims 1 and 4 have been amended. Claims 2-3 and 6-8 are canceled. New claim 9 is added. No new matter has been added as the amendments have support in the specification and the drawings as originally filed.

Claim of Priority

Applicant requests that the Examiner acknowledge of the Applicant's claim of foreign priority under 35 U.S.C. § 119(a). None of the boxes were marked on the Office Summary page. Please let us know if all, some or none of the copies have been received.

Claim Objections

The claim objections are now moot as the claims have been amended per Examiner's suggestion to correct the noted typographical prints.

112 Rejections:

Claims 4 and 5 are rejected under section 112. The Examiner contends that the Application only disclosed one home server in Figures 4 and 6, but the claims recited a plurality of home servers. The noted language has been cancelled from the claims. Therefore the 112 rejection is now moot.

The Examiner is reminded, however, that §112, first paragraph, requires for the specification to adequately support the subject matter claimed rather than mirroring the claim language word for word. MPEP 2163, *Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1319, 66 USPQ2d 1429, 1438 (Fed. Cir. 2003); *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d at 1563, 19 USPQ2d at 1116.

Support can be provided "in a variety of ways" and "using such descriptive means as words, structures, figures, diagrams, and formulas" to "show that the applicant was in possession of the claimed invention. *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997). See, e.g., *Pfaff v. Wells Elecs.*,

Inc., 525 U.S. 55, 68, 119 S.Ct. 304, 312, 48 USPQ2d 1641, 1647 (1998) (emphasis added).

Further, claim limitations may be supported in the specification through “express, implicit, or inherent disclosure.” See *In re Oda*, 443 F.2d 1200, 170 USPQ 268 (CCPA 1971). Referring to the specification pages 1-12 and figures 1-7 of the present application, a reasonable person reviewing the entire disclosure would clearly find that the applicant at the time of filing of the application was in possession of (and disclosed both explicitly and implicitly) the claimed features related to establishing a telephone communication between two or more parties and that the claimed device is not wearable on a person’s wrist.

Contrary to the Examiner’s understanding, section §112, first paragraph does not require a word-for-word matching between the language in the specification and the language recited in the claims. If one were to interpret §112, first paragraph, according to the Examiner’s understanding, then the claim language would have to be limited to *identical* language used in the specification and nothing more.

Referring to MPEP 2163 (II) (A), “[t]he examiner has the initial burden, after a thorough reading and evaluation of the content of the application, of presenting evidence or reasons why a person skilled in the art would not recognize that the written description of the invention provides support for the claims. There is a strong presumption that an adequate written description of the claimed invention is present in the specification as filed.” *Wertheim*, 541 F.2d at 262, 191 USPQ at 96.”

103 Rejections:

Claims 1-3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takahashi et al. (US 5,901,320) in view of Kouznetsov et al. (US 6,782,527). Applicants respectfully traverse the Examiner’s rejection. To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or

motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Takahashi is directed to a communication system comprising a plurality of network elements and a monitoring apparatus for centrally monitoring and controlling these network elements. Each of the network elements has a plurality of CPU's and flash memory for accommodating programs to be performed by the CPU's. When the version of any program is changed, the monitoring apparatus selects the program to be updated for each CPU (Abstract).

Kouznetsov is directed to a method of providing a set of desired application functions to a plurality of network-coupled computing appliances. A set of code resident on a network application management server is identified that when executed in a network appliance provides the desired application functions. A first application management agent in a first of the network computing appliances and a second application management agent in a second of the network computing appliances are executed (Abstract).

Takahashi and Kouznetsov either alone or in combination fail to teach or suggest a home server periodically performing the following two actions: (1) reading a system software version of a selected home appliance from among a plurality of home appliances, and (2) reading a latest system software version corresponding to the selected home appliance from an appliance company server, wherein the system software of the selected home appliance is upgraded among said plurality of home appliances.

More over, neither of the references teach that the home server is remotely connected to an appliance company server over an Internet connection and the home server is connected to each of said plurality of home appliances in a local home network, wherein the selected home appliance communicates via the home server and over the

Internet connection with the appliance company server, wherein the local home network is a local area network, wherein the home server is a centralized local home server, which determines which one of said plurality of home appliances connected to the home server in the local home network require a software update, without the plurality of home appliances individually making any determination about the software update, wherein a two-way communication connection is established between the home server and the appliance company server, wherein the home server is a home appliance, which is always in 'on' state; the home server reading a latest system software version corresponding to the selected home appliance from the appliance company server; the home server comparing the system software version of the selected home appliance in the local home network with the latest system software version of a corresponding home appliance in the appliance company server, without any help from the appliance company server; if the home server determines that the latest system software version of the corresponding home appliance in the appliance company server is newer than the system software version of the selected home appliance in the local home network, downloading the latest system software of the corresponding home appliance from the appliance company server to the home server; and the home server replacing the system software of the selected home appliance with the downloaded system software through the local home network by copying the downloaded system software from the home server to the selected home appliance.

Particularly, the claimed subject matter is directed to a home server that reads a system software version of a selected home appliance and the latest version of the system software for that home appliances as available on an appliance company server almost at the same time to determine if a new or updated version of the software is available for download to the home appliance. The above two actions as claimed are performed periodically. Furthermore, the home server is a home appliance which is always 'on', such as a refrigerator for example. Also, the home server receives a data broadcasting signal that includes the upgrade information for a system software from a broadcasting station.

In contrast to Takahashi, the claims recite a system in which a sever in a local network communicates with a plurality of appliances. The local server is in turn connected to a remote server which transfers to the local server updated software versions based on a request from the local server. The appliances individually do not submit a request directly to the remote sever. The appliances also do not make a determination that a new update is needed. It is the local server that performs the latter two functions. That is, the local server determines that an update is available for one of the appliances and requests for the update information to be forwarded from the remote server. In this manner, a central unit (i.e., the local server) performs the following tasks for each of the appliances connected to it in the local area network: (1) Determines if a new update is available; (2) Requests the new update to be downloaded from the remote server; and (3) Installs the new updates on a selected appliance (i.e., the appliance for which a new update is available).

Takahashi, however, fails to disclose all of the above noted elements and further teaches away from them. That is, according to Takahashi, a direct link is established between each device (i.e., CPU) and the server that provides the updated programs. More particularly, Takahashi teaches away from using a local area server as a central unit which determines the availability of updates for each of the appliances in a local network. In other words, according to Takahashi, each device is responsible for separately and individually performing the above enumerated 3 tasks. Instead, in the claimed invention, the responsibility of performing those tasks are delegated to the local area server. The applicant has thoroughly reviewed the teachings of Takahashi and respectfully notes that Takahashi does not suggest any of the above noted structural and functional elements.

Kouznetsov fails to cure the deficiencies of Takahashi. Col. 6 lines 40-49 and Fig. 2 of Kouznetsov disclose “a software-implemented agent 202 executes on the computing devices within the appliance 117. Agent 202 performs a relatively small number of functions in the application management solution in accordance with the present invention. First, agent 202 establishes a frequent connection with application management server 108 to check for updates in code and/or data used to provide the

application services. When appropriate, agent 202 downloads updated code into memory and/or storage devices within appliance 117.”

A review of the passage above reveals that agent 202 is executed within the appliance 117. Therefore, in the same way as Takahashi, each appliance is connected to the application manager server such that the application manager server directly sends updates to the appliance. As such, as noted above with respect to Takahashi, each appliance in Kouznetsov is individually responsible for requesting, downloading, and replacing the software of the appliance through the network. The connect server 105 of Kouznetsov does not perform any of the 3 enumerated functions as claimed.

Thus, both Takahashi and Kouznetsov teach away from the claimed invention by requiring the agent within each appliance to individually and independently request, download, and replace the software directly from a remote server. Where two references teach away, it would be unreasonable for the Examiner to suggest that they can be combined in the direction of the claimed invention.

Additionally, the Examiner alleges that Kouznetsov discloses “wherein a home server is connected to an appliance company server over an Internet,” as recited in amended claim 1. Applicant submits that element 101 of Kouznetsov discloses a network infrastructure, such as the Internet. Additionally, element 108 discloses an application management server. Applicant respectfully submits that connect server 105 cannot teach or suggest a home server as recited in claim 1, particularly for the following reason. Col. 5 lines 28-31 of Kouznetsov disclose that “connect servers 105 are implemented by connection sharing software such as Microsoft Internet connection sharing service (ICS) or by software such as found in routers.” Applicant submits that connection sharing software is not the same as a home server recited in claim 1.

As recited in claim 1, the home server is a centralized local home server, which determines which one of said plurality of home appliances connected to the home server in the local home network require a software update. Kouznetsov fails to teach or suggest

that the connect servers determine which one of a said plurality of home appliances require a software update. Applicant submits that the connect server disclosed in Kouznetsov is simply a device which allows a plurality of appliances to share a network connection. Therefore, in addition to the reasons presented above, Kouznetsov cannot teach or suggest “wherein a home server is connected to an appliance company server over an Internet,” as recited in amended claim 1. The applicant has thoroughly reviewed the teachings of Kouznetsov and respectfully notes that Takahashi does not suggest any of the above noted structural and functional elements either.

“A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. A functional limitation is often used in association with an element, ingredient, or step of a process to define a particular capability or purpose that is served by the recited element, ingredient or step.” MPEP § 2173.05. Accordingly, the Examiner is requested to point out with particularity all the claimed elements or otherwise withdraw the 103 grounds of rejection.

For the reasons presented above, claim 1 should be allowable over the cited combination of references. Additionally, claims 2-3 should be allowable by virtue of their dependence on allowable claim 1. Claim 8 is cancelled.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fitzpatrick in view of Kouznetsov and Takahashi..

The Office Action states that Fitzpatrick does not disclose “wherein the home server is a centralized local home server, which determines which one of home appliances in the local home network require a software update,” as recited in claim 4. The Office Action further states that it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Takahashi and Kouznetsov into the teaching of Fitzpatrick to teach the same. Applicant respectfully disagrees.

Applicant respectfully submits that prior art references in combination do not make an invention obvious unless something in the prior art references would suggest the advantage to be derived from combining the teachings.” In re Sernaker, 217 USPQ 1, 6 (Fed. Cir. 1983). Further, it is well settled that the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Since obviousness may not be established by hindsight reconstruction or conjecture, Applicant invites the Examiner to point out the alleged motivation to combine with specificity,¹ or alternatively provide a reference or affidavit in support thereof pursuant to MPEP §2144.03.²

It is respectfully submitted that the cited prior art references cannot be combined to teach the claimed invention. Further, even if one is modified in accordance to the teaching of the other, the resultant modification would be an impractical or inoperable combination.

The Examiner has admitted that Takahashi does not teach a home server connected to an appliance company server over an Internet and a two-way communication connection established between the home server and the appliance server. Thus, Takahashi does not intend for the monitoring apparatus to establish a two-way communication connection with an appliance server. Rather, Takahashi intends for the monitoring apparatus to store “in advance a plurality of program files for each of the CPU’s in each network element.” (Takahashi, Col. 4 lines 23-25). On the contrary, Fitzpatrick teaches downloading program code from a remote source directly to a set-top-box (STB) and determining whether the downloaded data is a match for the STB and should be installed (Fitzpatrick par. [0059]).

¹ *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984).

² “The rationale supporting an obviousness rejection may be based on common knowledge in the art or “well-known” prior art . . . If the applicant traverses such an assertion the examiner should cite a reference in support of his or her position. When a rejection is based on facts within the personal knowledge of the examiner . . . the facts must be supported, when called for by the applicant, by an affidavit from the examiner.”

As such, Takahashi does not provide a motivation to combine with Fitzpatrick because Takahashi requires the monitoring apparatus to store in advance a plurality of program files for each CPU, unlike Fitzpatrick which downloads information and determines whether the downloaded data should be installed. Applicant submits that there is no indication in the Office Action, how such combination is possible, as the two systems are independently complex and cannot be easily modified to work with each other. As such, no portions of the cited references provide a suggestion or motivation for combining the references in a manner that would make the invention as recited in claims 4-7 obvious.

For the above reasons, the invention as recited in the amended claim 4 is distinguishable over the references cited by the Examiner. Independent claim 6 substantially incorporates the discussed limitations of claim 4 and therefore claim should be in condition for allowance. Claim 5 depends on claim 4 and should also be in condition for allowance by the virtue of their dependence on an allowable base claim.

In view of the above remarks, Applicant submits that claims pending in the present application are in condition for allowance. Reexamination and reconsideration of the application, as originally filed, are requested. No amendment made was related to the statutory requirements of patentability unless expressly stated herein; and no amendment made was for the purpose of narrowing the scope of any claim, unless Applicant has argued herein that such amendment was made to distinguish over a particular reference or combination of references.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles, California telephone number (213) 623-2221 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

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